



Shoreland Zoning Newsletter



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Fall 2008

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Share the News

Please distribute to the Select Board, Planning Board, Appeals Board, and the Code Enforcement Officer.

We're online! New and old Newsletters are available at: <http://www.maine.gov/dep/blwq/docstand/szpage.htm#publicationssz>

About the News

For over 15 years, the Shoreland Zoning Newsletter has been helping town officials better understand common issues regarding shoreland zoning administration and enforcement. Your feed back is always welcome. Submit comments and Your Questions to stephenie.mcgarvey@maine.gov

Updating Shoreland Zoning Ordinance

The last several Newsletters have focused on the changes to the State Guidelines For Municipal Shoreland Zoning Ordinances and how they affect towns in drafting new ordinances. This focus continues in this issue.

Draft Review vs Final Approval?

First towns draft a new ordinance analogous with the Guidelines. Then, the town adopts it. Once adopted, submit the ordinance to the Department of Environmental Protection for approval. The Shoreland Zoning Unit is available to review draft ordinances, but the Department will still need to approve the adopted one.

Revised Moderate & High Value Wetland Maps are Coming:

Maps depicting moderate and high value inland waterfowl and wading bird habitat are being updated. Most towns have received revised maps. Updating will be complete in Octo-

ber. The maps aid in updating towns' shoreland zoning maps; these areas are to be designated as Resource Protection unless already developed.



Timber Harvesting Regulation:

Some versions of the Guidelines don't include certain language required! If the town chooses to repeal municipal regulation of timber harvesting, then please make sure that: Section 4(B) under the 1st bullet, replace "column" with "item" and include "item 27 (land management roads)"; under the 3rd bullet include the definitions for "skid trail" and "slash". Definitions Section: omit "DBH" as it isn't in the Ordinance.

Effective Date of Ordinance:

If the town is adding the optional provision in Section 12(E)(3), pertaining to non-conforming lots, then

Continues on PG 2

30% Expansion, Greatest Practical Extent

When a new or enlarged foundation is being proposed and/or removal of greater than 50% of the market value of a non-conforming structure, then the planning board must determine where the structure can be located to meet the setback requirement to the greatest extent practicable.

The planning board should first determine the new location for the

footprint of the original structure. Once determined, the expansion of that structure can be considered.

No expansion is allowed closer to the resource than the relocated structure, because that would cause the structure to become more non-conforming. This is so, even if the reconstructed/expanded structure would be farther from

Continues on PG 3

Ruling on a Variance Request

One of the duties of the Board of Appeals is to rule on variance requests. A variance is required if an applicant wishes to deviate from the shoreland zoning ordinance dimensional standards. While the applicant may feel they qualify for a variance, it is up to the Board to determine whether they meet the conditions required for granting a variance.

The applicant must also show that without the variance undue hardship would result. There are four criteria Boards must use to determine this. The most difficult criterion for the applicant to show is that without the variance the land cannot yield a reasonable return.

Only when all beneficial use is removed by not granting a variance has an applicant lost all reasonable return. Maximum return is not reasonable return. If an applicant requests a variance from the

setback for a dwelling but could use the land for day-use, camping, or another use, then a variance should not be granted. Even if the value of the land drops from \$60,000 to \$10,000, not all reasonable return / beneficial use has been lost.

There is set precedence by the Maine Supreme Court: Bolduc versus Town of Beddington (2007) and Bernard versus Town of Yarmouth (1974) state that loss of greatest return does not mean all return is lost. Further, Wyer versus Department of Environmental Protection (2000) set that reduction in property value is not a taking, and burden of proof of undue hardship is on the plaintiff.

Review the Appeals Section of the town ordinance in preparation for ruling on a variance request. The Board of Appeals Manual published by the Maine Municipal Association is also a valuable tool. 🐟

Update continued

one of the following must be included: Either the date is referenced in Section 4(A) of the town's ordinance adopted in 1990s when lot size and shore frontage requirements were increased, or in the optional provision replace "the effective date of this ordinance" with the date of the town's ordinance adopted in the 1990s. This ensures that the grandfathering of non-conforming lots does not extend to the date of this newly amended provision.

*The deadline for
mandatory updates is
July 1, 2009!*

Coastal Bluffs Setback

There's a new setback starting point to be aware of. Protection of unstable and highly unstable coastal bluffs has been introduced in Section 15(B)(1)(c). When measuring the setback for principal structures, start from the top of the coastal bluff. The depth of the shoreland zone is still measured from the Highest Annual Tide or upland edge of the wetland.

Coastal bluff stability is mapped by the Maine Geological Survey. Towns were sent these maps, and

are also online at: <http://www.maine.gov/doc/nrimc/mgs/pubs/online/bluffs/bluffs.htm>

Appendices

There are two appendices in the Guidelines. Towns may not have to include one or both. If the town adopts the Alternative to the 30% Expansion Rule, then Appendix A should replace the 30% Rule language in Section 12(C). Appendix B should only be included in ordinances of towns that have Significant River Segments. If the town does not have any Significant River Segments, then all reference to them should be removed, including its Definition and references in Sections 15(B)(1)(b), 15(H)(3), and 15(M)(3).

Deadline will not be extended

The deadline for mandatory updates is July 1, 2009. The Department is not anticipating any more extensions to this deadline. After July 1st, the Department will begin adopting state-imposed ordinances for the towns that have not adopted the new requirements. 🐟

Checklist Before Snow Flies...

Code Enforcement Officers, prepare for winter:

1. How are revisions of the town ordinance and map progressing? Does the Planning Board need assistance?
2. Double check that winter erosion control measures are planned for on-going projects.
3. Document status of any restoration projects.
4. Check on new stream crossings and other sites likely needing prevention of erosion from fall rains and thaw.*
5. Evaluate areas of proposed changes on the Town Shoreland Zoning Map, particularly wetland areas.
6. Make a list of docks of concern you may want to check this winter for whether they are in fact temporary.*
7. Make a list of individual private campsites of concern you may want to check this winter for whether they are in fact temporary.
8. Check vegetative buffers at current project locations and recently completed project locations.
9. Schedule any winter trainings you're interested in.
10. Enjoy the hunting and leaf-peek season!

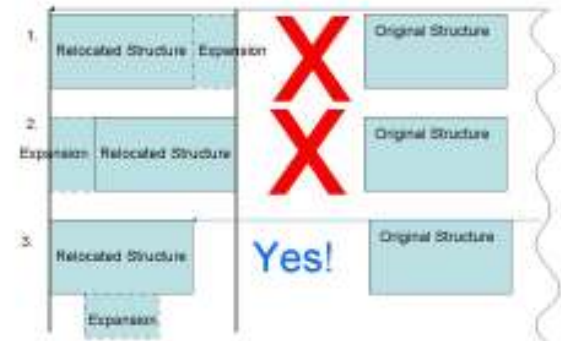


* Some towns don't regulate structures and uses extending over or below normal high-water line. 🐸

Expansion continued

the resource than was the original structure. The expansion must occur beside or behind the relocated structure.

Below, #1 & #2 show where the new



setback was determined based on the reconstructed/expanded structure. Whether or not the expansion is in front or behind the relocated structure, the result is that the structure is closer to the resource than if the new location was determined based on the original structure excluding the expansion, like #3.

Example #3 depicts the ordinance being applied correctly. The expansion proposed is subject to the new setback. 🐸

Your Questions

Q: My town is considering a town-wide land use ordinance. What are the pros and cons to combining the shoreland zoning ordinance with other land use ordinances?

A: The benefit is that it's simpler to find standards, having to reference only one document regarding land use ordinances. Wording the ordinance may not be as simple: There are many land use provisions in the shoreland zone that a town may not want to apply town-wide, and it can be tricky writing the ordinance to state which provisions apply where. Additional guidance through professional planners may be needed.

Amending the town-wide ordinance can also be tricky: Whenever a provision that applies in the shoreland zone is amended, that amendment must be reviewed by the Department of Environmental Protection before it becomes effective.

Also consider the zoning maps: The shoreland zoning map must be consistent with the ordinance text. For example, the titles of districts must be consistent in the land use table of the text and on the map. Towns with complex district maps may find it difficult to depict all the town's zones on one map. Using GIS technology may be helpful in creating zoning maps, but not all towns have these resources. 🐸

Notes from the Shoreland Zoning Unit

The Shoreland Zoning Coordinator for the Eastern Maine Regional Office, in Bangor, has been hired!

Stephenie McGarvey joins us after many months working in the Central Maine Regional Office in Field Services and Enforcement. She spent the past several years working in natural resource fields and as a coordinator for other organizations. She's eager to help out Maine's eastern towns with shoreland zoning questions, and will be writing the Shoreland Zoning Newsletter.

Rich Baker, Mike Morse, and Eric Hitchcock continue to serve towns in Central Maine, Southern Maine, and Northern Maine respectively. Feel free to contact the person who is assigned to your region with questions regarding shoreland zoning.

A reminder:

Amendments to ordinances are coming in for review, and towns are requesting assistance with drafting new ordinances and maps. This is expected to increase as we approach the July 1st deadline. Please be patient as it may take us a day or two to return phone calls and emails. To help us out, remember your camera when you do a site visit. Attach the photos to an email if you need our help; this will save us time in having to conduct site visits. 📷

Contact Us

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